

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 4, Article 11, Sections 1598 and 1599
of the Construction Safety Orders

Update References for Traffic Control**SUMMARY**

This rulemaking action is the result of a Request for New, or Change in Existing, Safety Order, dated February 3, 2005, submitted by the Division of Occupational Safety and Health (Division). The Division requests that the Occupational Safety and Health Standards Board (Board) update references to the State Department of Transportation (DOT) Manual of Traffic Controls in Sections 1598 and 1599 of the Construction Safety Orders (CSO) and replace them with appropriate references.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**Section 1598. Traffic Control for Public Streets and Highways.****Subsection (a)**

This subsection contains the requirements for traffic controls where a hazard exists to employees due to traffic or haulage conditions that encroach upon public streets or highways. Currently, these traffic controls must be in conformance with the Manual of Traffic Controls for Construction and Maintenance Work Zones – 1996 (Manual). The proposed rulemaking would update the existing reference to the Manual on Uniform Traffic Control Devices (MUTCD) dated December 2000, as amended by the MUTCD California Supplement dated May 20, 2004. Language will be added to advise employers that the Manual is available from the Federal Highway Administration website or the California Department of Transportation's website. The necessity of these changes is to clearly indicate to employers where standards may be found which pertain to protecting employees from the hazards associated with exposure to vehicular traffic.

Note to subsection (a)

The "Note" states that additional means of traffic control for the safety of employees may be employed. The "Note" further states that the criteria for position, location and use of traffic control devices described in the Manual are not mandatory and are furnished solely for guidance and information. The proposed amendment would delete the statement that these criteria for

traffic control devices are not mandatory, and are furnished for guidance and information only. These changes are necessary to ensure that the requirements for traffic control devices as described in the Manual are enforced and employees are protected from the hazards associated with exposure to vehicular traffic.

Subsection (b)

Subsection (b) states that the specifications for the size and design of signs, lights, and devices used for traffic control are found in the Manual, published by the State Department of Transportation. The proposed amendment would delete the language, “published by the State Department of Transportation.” The change is necessary because the Manual is no longer printed by the State Department of Transportation.

Note to subsection (b)

The “Note” advises the reader that the Manual may be obtained at any Division office or from the Department of Transportation. An amendment is necessary to delete the “Note” because the Manual is no longer available in print from these two sources.

Section 1599. Flaggers.

Subsection (c)

Subsection (c) requires the placement of warnings signs to be in accordance with the Manual of Traffic Controls for Construction and Maintenance Work Zones - 1996. The proposed amendment would update the existing reference to the Manual on Uniform Traffic Control Devices dated December 2000, as amended by the MUTCD California Supplement dated May 20, 2004, and delete the statement that the Manual is published by the State Department of Transportation. Language will be added to advise employers that the Manual is available from the Federal Highway Administration website or the California Department of Transportation’s website. The necessity of these changes is to update the standard and ensure that employers practice current standards when the placement of warning signs is required for employee safety and to clearly indicate to employers where standards may be found which pertain to protecting employees from the hazards associated with exposure to vehicular traffic.

DOCUMENTS RELIED UPON

1. Vol. 67 Fed.Reg. 18091-18112 (April 15, 2002)
2. Memorandum from Len Welsh, Acting Chief, Division of Occupational Safety and Health, to Keith Umemoto, Executive Officer, Occupational Safety and Health Standards Board dated February 3, 2005, with attached Request for New, or Change in Existing, Safety Order for sections 1598 and 1599

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

1. U.S. Department of Transportation Federal Highway Administration Manual on Uniform Traffic Control Devices, Part 6, Temporary Traffic Control, December 2000
2. MUTCD 2003 California Supplement, May 20, 2004, Part 6, Temporary Traffic Control

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

The MUTCD is a standard that has been routinely updated for decades by the Department of Transportation. The process used to update this standard is for DOT to work with state highway officials, who provide federal officials with information on the evolving nature of traffic control devices and industry practices. The federal role consists primarily of compiling this evolving set of practices and devices into a national manual, the MUTCD that includes standards, guidance, and options. As noticed by a DOT official, the MUTCD essentially codifies current industry practice. Thus, most potentially affected parties, local governments, highway and utility contractors, and others, already apply the MUTCD. The DOT has consistently found that changes and revisions to the MUTCD do not lead to significant compliance costs.

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.